

REMARKS

Claims 1, 2, and 13-26 remain before the Examiner for reconsideration. Claims 1, 13 and 15 have been amended. The amendments to Claims 1, 13 and 15 are set forth in an Appendix hereto including markings to show the revisions made to those claims. In the Appendix, deletions are indicated by bracketing, and insertions are indicated by underlining.

Applicant and the undersigned attorney for Applicant wish to thank the Examiner for the courtesy extended by the Examiner in the interview of March 4, 2002.

In the Office Action dated December 28, 2002, the Examiner rejected Claims 1, 2, and 13-36 under 35 U.S.C. Section 103(a) "as being unpatentable over Harkness [U.S. Patent No. 5,467,992] in view of Carney [U.S. Patent No. 6,213,887]." Specifically, the Examiner asserted that:

Claims 1, 2, and 13-26 are rejected under 35 U. S. C. 103 (a) as being unpatentable over Harkness in view of Carney. Harkness discloses a device support member worn around a person's head and an attached laser light (abstract) generating a linear alignment beam of light visible to the person to provide an alignment of the person's body when in position to perform the task as stated in claims 1 and 2 (figs. 2 and 3). Harkness also discloses a cylindrical lens and positions of the lens directing the beam of light as in claim 2 (fig 4 and col 3, lines 20-26). Regarding claims 19, 20, 25, and 26, Harkness does not disclose the device around the chest or hips of the user. However, Harkness does disclose the device as being interchangeable among different items. One skilled in the art would have placed the device around the chest or hips to identify the proper stance. Regarding the claims 21-24, Harkness reveals that the device may be used to identify excessive movements of the head and upper body (col 6, lines 8-10). Alignment and movement are synonymous in this instance. The reference uses the beam of light to watch for excessive movement before a swing or in other words adjusting his/herself to achieve an optimal golfing stance prior to the swing. Applicant uses the beam of light to align his/her body to achieve the proper stance before the swing. Harkness discloses a spot of light the ground and does not disclose a line of light. However, Carney teaches a line of light for proper alignment. One skilled in the art

would have modified the invention of Harkness with Carney by changing the spot of light to a line of light to provide a more accurate alignment means for the user.

Applicant's respectfully traverse the Examiner's assertion.

As explained to the Examiner in the interview of March 4, 2002 and in prior responses, Harkness discloses the use of a light spot projected onto the ground to aid a golfer in observing head movement during a golf swing. Indeed, the scope of the invention of Harkness is set forth in the abstract of Harkness as follows:

A method for using a light spot projecting aid to observe head movements during a golf swing and to provide a golfer with an explanation (i.e., cause) of the effect manifested as the light spot being moved.

(Emphasis added). To allow the user to observe such head movements, Harkness discloses attaching a light source such as a laser to a person's visor or hat to generate a light spot that is visible to the person. See, for example, Figures 1 and 2 of Harkness. The light spot generated by Harkness on the surface does not disclose or suggest the generally linear beam of light of the present invention, which is generated on a surface to indicate the alignment of a portion of a persons body. As discussed further below, the light source of the present invention is structurally different from that of Harkness to generate such a generally linear beam of light.

Nowhere does Harkness even address the issue of alignment of the person's body wearing the device of Harkness. Indeed, the projected spot provides absolutely no information to the person (for example, a golfer) of the alignment of any portion of the person's body. As demonstrated to the Examiner in the interview of March 4, 2002, the spot of light of Harkness does not even provide information as to the alignment of the cap on the person's head (which need not be aligned with the orientation of the person's head) as the device need not be placed on the cap to project the light in any specific orientation. The spot of light projected by the device of Harkness need only

be visible to the person. As also demonstrated to the Examiner, if, for example, during a golf swing the golfer's head moves, the spot of light generated by the device of Harkness will also move. Seeing the movement of the spot of light, the golfer will be informed that his or her head has moved during the swing. However, no information is provided to the golfer regarding the alignment of any portion of the golfer's body before, during or after the golf swing.

The Examiner's assertion that "alignment and movement are synonymous in this instance" is clearly erroneous and unsupportable. Once again, Harkness does not address the issue of alignment of a person's body. Moreover, information on alignment cannot be extrapolated from the information on movement provided by the light spot of the device of Harkness.

Nonetheless, the Examiner asserts that the deficiencies of Harkness can be overcome by the disclosure of Carney. Carney disclosed the propagation of a line of light on the ground to indicate the target line to a particular target such as a simulated golf hole. Applicant respectfully asserts that the deficiencies of Harkness cannot be overcome by the disclosure of Carney.

Indeed, given that the disclosure of Harkness is silent upon and irrelevant to the alignment of a person wearing the device of Harkness, there is absolutely no motivation for one skilled in the art to combine the teaching of Harkness with the teaching of Carney. See, for example, Ex parte Chicago Rawhide Mfg. Co., 223 USPQ 351, 353 (P.O. Bd. Appl. 1984) ("The prior art must provide a motivation or reason for a worker in the art without the benefit of appellant's specification to make the necessary changes in the reference device."); Schenk v. Norton, 218 USPQ 698, 702 (Fed. Cir. 1983) ("Modification unwarranted by the disclosure of a reference is improper."); Ex Parte Acosta, 211 USPQ 636, 637 (P.O. Bd. Appl. 1980) (Examiner's combination of two references is improper where there is no basis in the record from which it can

reasonably be inferred that one skilled in the art would have been led or motivated to modify the primary reference in the manner proposed by the Examiner.).

In any event, one cannot combine the teaching of Harkness with the teaching of Carney to arrive at the present invention. Like Harkness, nowhere does Carney disclose or suggest a device or method as claimed in the present invention wherein a light source is attached via an attachment member to a portion of a person's body in a manner to project a generally linear, alignment beam of light on a surface visible to the person, which provides to the person an indication of an alignment of a plane transversing the portion of the person's body when the person is in position to perform the task (for example, a golf putting stroke). Likewise, neither Harkness, Carney nor any combination thereof disclose or suggest such a device including an attachment member maintaining the support member in a position on the user's body such that the light source provides to the person an indication of an alignment of a plane transversing the portion of person's body when the person is in position to perform a task.

Although Carey discloses a target line to which a person may attempt to align a portion of the person's body, the person is provided with no indication of how that portion of the person's body is actually aligned by the device of Carney. To the contrary, the devices and methods of the present invention provide real time feedback to a person of the alignment of a portion of the person's body.

In addressing the disclosure of Carney, Applicant does not admit that Carney is prior art in the present invention as Applicant's invention date may be provable to be prior to the date of Carney. Applicant reserves the right to swear behind the Carney reference.

Furthermore, one manner of producing a generally linear beam of light upon a surface as disclosed in the present invention is to position a generally cylindrical lens transverse to a light beam emanating from a light source such as a laser. Contrary to

the Examiner's assertion, Harkness does not disclose or suggest a generally cylindrical lens positioned transversely to a light beam emanating from the laser to create a planar beam of light which forms the generally linear, alignment beam as claimed in the present invention. Once again, Harkness merely discloses a lens 15 that "may be fastened to the free end of the laser 14 to further focus - in other words, reduce the size of - the light spot 16 if desired." Col. 3, lines 24-26. The Examiner has not and cannot point out where in the disclosure of Harkness (and, particularly at col. 3, lines 20-26 referenced by the Examiner) a cylindrical lens positioned transversely to a light beam emanating from the laser is disclosed or suggested.

This erroneous assertion by the Examiner and the Examiner's assertion that "one skilled in the art would have modified the invention of Harkness with Carney by changing the spot of light to a line of light to provide a more accurate alignment means for the user" evidences a continuing misunderstanding of the disclosure of Harkness. Once again, alignment is irrelevant to the stated sole purpose of the device of Harkness (that is, the detection of motion). There is thus no motivation therein to modify the structure of the light source of Harkness to provide "a more accurate alignment means."

The Examiner also rejected Claims 1, 2, and 13-26 "under the judicially created doctrine of obvious-type double patenting as being unpatentable over Claims 1-10 of U.S. Patent No. 5,879,239". Specifically, the Examiner asserted that:

Although the conflicting claims are not identical, they are not patentably distinct from each other because the present invention encompasses the '239 patent. The present invention claims the actual device without any specifics regarding location. The '239 patent includes the same subject matter but limits the device to be attached to eyeglasses. One skilled in the art would obviously relocate the device to different areas of the user's body to accommodate the needs of each user.

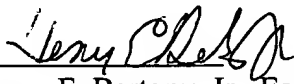
Applicant respectfully asserts that Claims 1, 2, and 13-26 of the present application are patentably distinct from Claims 1-10 of U.S. Patent No. 5,879,239. Nonetheless,

Applicant respectfully requests that any requirement to file a terminal disclaimer to overcome the Examiner's obvious type double patenting rejection of the claims be delayed until Applicant overcomes the Examiner's other objections and rejections.

In view of the above amendments and remarks, the Applicant respectfully requests that the Examiner withdraw the rejection of the claims, indicate the allowability of Claims 1, 2, and 13-26 and arrange for an official Notice of Allowance to be issued in due course.

Respectfully submitted,

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Appendix

Version with markings to show changes made

Please delete the text of Claims 1, 13 and 15 and insert therefore the

following:



1. (Thrice Amended) A device for assisting a person in achieving proper alignment of [a portion of] the person's [body] eyes when the person is in position to perform a task, comprising:

a support member [to be worn by the person upon] including an attachment member for donning the [the] device upon the person's [body] head;

a light source attached to the support member, the light source being attached to the support member to generate a generally linear, alignment beam of light on a surface visible to the person, the attachment member maintaining the support member in a position on the user's head such that the light source [to provide] provides to the person an indication of an alignment of [a portion of the person's body] a plane transversing the person's eyes when the person is in position to perform the task.

13. (Twice Amended) The device of Claim 1 wherein the support member] attachment member is a band adapted to be worn on the head of the person, the light source being attached to the band [so that alignment beam of light provides an indication of alignment of a line running transversely through the person's eyes].

15. (Once Amended) A device for assisting a person in achieving proper alignment of a portion of the person's body in a desired direction when the person is in position to execute a golf stroke, the device comprising:

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a support member to be worn by the person upon the person's body, the support member including an attachment member for donning the device upon the person's body;

a light source attached to the support member, the light source being attached to the support member to generate a generally linear, alignment beam of light on a surface visible to the person that is generally parallel to a line passing transversely through the portion of the person's body to provide to the person an indication of the alignment of the portion of the person's body, the attachment member maintaining the support member in a position on the user's body such that the light beam is generally parallel to a line passing transversely through the portion of the person's body.